(1)

Supreme Court, U.S.
FILED

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No. OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

RICHARD T. HARRIS,

PETITIONER

v.

UNITED STATES OF AMERICA,

RESPONDENT,

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Richard T. Harris
607 South State Street
West Harrison, Indiana
47060
(812) 637-2585
Pro Se

12 pp

QUESTIONS PRESENTED

1. Did the Seventh Circuit err in failing to find that Petitioner has a right to seek and receive the requested information as held by the Supreme Court in Riesman v. Caplin, 375 U.S. 440?

2. Did the Seventh Circuit err in failing to find that there are limitations upon the authority of government employees as succinctly stated by the Supreme Court in Federal Crop Ins. Corp. V. Merrill, 332 U.S. 380 at 384 (1947); 68 S.Ct.1?

3. Did the Seventh Circuit err in failing to find the government's application of IRC section 7602 is vague and unclear resulting in a constitutional deprivation of Petitioner's Fourth and Fifth Amendment right to due process?

4. Did the Seventh Circuit err in failing to find the Internal Revenue Service is bound by Public Law 93-579?

5. Did the Seventh Circuit err in failing to find the Internal Revenue Service is bound by regulations promulgated and published in the Federal Register pursuant to the mandate of the Privacy Act of 1974?

6. Did the Seventh Circuit err in failing to find that the government's application of 7602 results in a constitutional deprivation of Petitioner's First Amendment right to receive information and to petition the government for a redress of grievance?

7. Did the Seventh Circuit err in failing to find the government's application of IRC section 7602 results in a constitutional deprivation of Petitioner's rights?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is unpublished.

The opinion of the United States District Court appears at Appendix B to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was December 10, 1998.

No petition for rehearing was timely filed in my case.

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pursuant to Rule 14(1)(f) of the Rules of the Supreme Court of the United States, the provisions involved are lengthy. Their citation is provided along with where in the Appendix to the petition the text of the provisions appears.

First Amendment to the Constitution of the United States of America. Appendix C.

Fourth Amendment to the Constitution of the United States of America. Appendix D.

Fifth Amendment to the Constitution of the United States of America. Appendix E

Privacy Act of 1974, 5 USC 552a. Appendix F.

Internal Revenue Code Section 7602. Appendix G.

STATEMENT OF THE CASE

Petitioner received an Internal Revenue Service Code Section 7602 summons on February 27, 1997 pertaining to a third party directing Richard T. Harris to appear before Revenue Agent Sam McKinney on March 10, 1997 at 9:30 A.M., at the office of the Internal Revenue Service located at 16 Spiral Drive, Suite 120, Florence, Kentucky. The expressed purpose was for Harris to testify and to produce for examination books, records, and other documents that may be relevant or material to an investigation. Petitioner immediately requested clarification of any duty owing the federal government as well as how and when Petitioner became subject to the Internal Revenue Code and by what authority. Petitioner's request pursuant to the Privacy Act of 1974 was totally ignored and no response has been forthcoming.

Notwithstanding Agent McKinney and/or the government's total disregard for the requirements imposed upon them by the Privacy Act, Petitioner Harris appeared at the designated time and place with his records. Once again Harris made an effort to elicit the necessary information as to how, when and by what authority he became subject to the Internal Revenue Code. Agent McKinney again refused to provide any information and declared that the interview was over.

After Agent McKinney terminated the March 10, 1997 meeting, the government petitioned the United States Court for the Southern District of Indiana under I.R.C. Sections 7402(b) and 7604(a) to enforce the summons. On July 27, 1998, the District Court ruled that Harris lacked entitlement to any further information before complying with the summons. Whereupon Richard T. Harris appealed the District Court's ruling to the United States Court of Appeals for the Seventh Circuit. Both the District Court and the Court of Appeals

failed to address Petitioner's Constitutional rights as affirmed by the Supreme Court. On December 10, 1998, the United States Court of Appeals for the Seventh Circuit affirmed the District Court's ruling.

REASONS FOR GRANTING THE PETITION

Petitioner will show that the United States Court of Appeals for the Seventh Circuit has decided an important federal question contrary to the Constitution of the United States of America and in a way that conflicts with relevant decisions of the Supreme Court of the United States.

> Treasury regulations are not absolute rules of law and, consequently, they should not be followed when they are inconsistent with purpose of the Internal Revenue Code section in question or exceed administrative authority granted. Estate of Gresham v. C.I.R., 752 F.2d 518 (1985). Due Process is not a technical conception with fixed content unrelated to time, place, and circumstances; rather, it is flexible and calls for such procedural protections as a particular situation demands. U.S.C.A. Const. Amend. 5.

Mathews v. Eldridge, 96 S. Ct. 893, 424 U.S. 319, 47 L.Ed.2d 18.

The IRS has known for years that even an individual "taxpayer" (as defined) may refuse to exhibit his books and records. A section from a 1975 Internal Revenue Manual states:

> An individual taxpayer may refuse to exhibit his books and records for examination on the ground that compelling him to do so might violate his right against self-incrimination under the Fifth Amendment and constitute an illegal search and seizure under the Fourth Amendment.
>
> MT9900-26 (1-29-75) IR Manual 242.12.

The manual references the cases of Boyd v. United States, 116 U.S. 616 (1886); Internal Revenue Agent v. Sullivan, 287 F.2d 138 (W.D.N.Y. 1923); United States v. Vadner, 119 F. Supp. 330 (E.D. Penn. 1954). Petitioner

claimed his rights afforded by the Fourth and Fifth Amendments when, upon receipt of the summons, he sent Agent McKinney a letter requesting answers to a number of concerns regarding the government's investigation. The government's response has been to ignore and disregard the constitutionally guaranteed rights of Richard T. Harris. The Fourth and Fifth Amendments were described in Boyd v. United States, 116 U.S. 616, 630; 6 S.Ct. 524, 532; 29 L.Ed. 746; as protection against all governmental invasions "of the sanctity of a mans home and the privacies of life." The court said in full about this right of privacy as delivered by Mr. Justice DOUGLAS.

> The principles laid down in this opinion ...affect the very essence of constitutional liberty and security...It is not the breaking of his doors, and the rummaging of his drawers, that constitutes the essence of the offense; but it is the invasion of his indefensible rights of personal security, personal

liberty and private property, where that right has never been forfeited by his conviction of some public offense...Griswold v. Connecticut, 381 U.S. 479, 14 L.Ed. 2d 510, 85 S.Ct. 1678 (1965).

In later cases, it has been established that to force the individual (taxpayer) to produce the records would also be forcing him to admit that the records exist and are in his possession. This too would be a violation of the Fifth Amendment right to not be a witness against ones self. It is not the records that are protected under the Fifth Amendment, but rather the individual who is protected from being forced into the act of producing the documents or admitting that such documents exist. The Fifth Amendment is limited to "physical or moral compulsion" exerted on the person asserting the privilege. See Fisher v. United States, 425 U.S. 391, 397 (1976); United States v. Doe, 465 U.S. 605 (1984). This is available to both one who is subject to a tax and one who is not.

The Court of Appeals completely disregarded the protections afforded every United States citizen by the Fourth and Fifth Amendments when it affirmed the District Court's ruling.

Richard T. Harris, from the very first contact by the IRS, has attempted to decipher just what authority the agent may have and to determine if in fact he had a duty or obligation to the federal government. Petitioner has been thwarted at every attempt to make this determination by either Agent McKinney or the Seventh Circuit. Regarding the summons to obtain records and other information issued under the alleged authority of 26 U.S.C. 7602, we see that the person summoned must first be liable for a tax or required to perform the act.

Sec. 7602. Examination of books and witnesses.

(a) Authority to summon, etc.....the Secretary is authorized--

(b) To summons the person liable for tax or required to perform the act...

26 U.S.C. 7602 (a).

The Secretary of the Treasury delegates authority to the Commissioner of Internal Revenue who then delegates to the people below him. None of these people have the authority to determine who is or who is not subject to or liable for any tax. If the Code does not make a person liable for a tax, the Secretary has no authority to create something that is not authorized by law. The government has shown no place in the Code that makes Richard T. Harris or the targeted individual subject to or liable for any revenue tax. If they can't make this showing, they had no authority to issue the summons under Section 7602(a), and the summons is invalid. Due to the government's refusal to participate in a meaningful adversarial proceeding, Harris has been unable to determine if the summons is valid. Harris has not and does not dispute the prima facie case established through an affidavit signed by Agent McKinney and heavily relied upon by the Court of Appeals.

Unfortunately, the Court of Appeals fails to take notice of an opinion of the Court delivered by Mr. Justice Clark in Reisman v. Caplin, 375 U.S. 440 (1964).

> "...This Court has never passed upon the rights of a party summoned to appear before a hearing officer under 7602. However, the government conceded that a witness or any interested party may attack the summons before the hearing officer. There are cases among the circuits which hold that both parties summoned and those affected by a disclosure may appear or intervene before the District Court and challenge the summons by asserting their constitutional or other claims. In re. Albert Lindley Lee Memorial Hospital, 209 F.2d 122 (C.A. 2d Cir.); Falsone v. United States, 205 F.2d 734 (C.A. 5th Cir.); and Corbin Deposit Bank v. United States, 244 F.2d 177 (C.A. 6th Cir.). We

agree with that view and see no reason why the same rule would not apply before the hearing officer...

[375 U.S. 440, 446]

The Reisman Court held that a witness or any interested party may attack before the hearing officer, on constitutional or other grounds, a summons issued under 7602. P. 445. Furthermore, in the procedures before either the district judge or a United States Commissioner, the witness may challenge the summons on any appropriate ground, ... Also in any such procedures, third parties may intervene to protect their interests... The government relies upon United States v. Powell, 379 U.S. 48 (1964) to establish its compliance with the requirements for a prima facie case for enforcement. However, the same Powell case tells us: "This does not make meaningless the adversary hearing to which the taxpayer is entitled before enforcement is ordered. At the hearing he "may challenge the

summons on any appropriate ground," Reisman v. Caplin, 375 U.S. 440, at 449. The Supreme Court has clearly stated not once but twice that a person summoned under 7602 has a right to challenge the summons on any "appropriate ground." District Court Judge Sarah Evans Barker writing in her Entry on Pending Matters and directing Entry of Judgment states: "Harris...has interjected his insistence that certain questions he has about the process and about this investigation in particular be answered...Harris is not entitled to any additional information regarding the subpoena or the process..." The court of Appeals affirms. The District Court and The Court of appeals for the Seventh Court of the United States are in direct conflict with two relevant decisions of the Supreme Court of the United States.

The Court of Appeals affirmation that Petitioner is not entitled to receive pertinent information that would determine the source of the authority of the IRS to summons an individual

is tantamount to the doctrine of Lex Rex, the "divine right of kings." The Court of Appeals holding flies in the face of all that is reasonable and equitable in a republican form of government, and all of the protections of the Constitution for the United States of America that guarantee to the Citizens that the government cannot oppress them or deprive them of their property without due process of law. The lower courts have, in essence, held that a Citizen has no right to know the source of the IRS's authority to summons, or for that mater anything else because we are to blindly and meekly acquiesce to any prima facie demand placed upon us. In light of such an unintelligible holding, neither the Petitioner, nor any American Citizen, can ever have any knowledge that they do or do not owe an obligation or duty to the United States government. The absurdity of this conclusion is clear on its face and the result is an unconscionable deprivation of the constitutionally guaranteed rights of the Petitioner.

The Constitution of the United States of America is the Supreme Law of the land that guarantees, protects and preserves under the First Amendment the undeniable right of the citizens of the sovereign Union States to exercise free speech against the government. The "right to receive' doctrine has been set forth by the Supreme Court of the United States as an equal and necessary right parallel to the right of free speech acknowledging that citizens must be given access to information so that they may intelligently argue and exercise their First Amendments rights to speak freely. Discovery in civil litigation, discovery in criminal litigation, discovery in seeking administrative remedy flow from this most basic right to "receive information" to use in the exercise of petitioning the government for a redress of a grievance, most especially to protect one's life, liberty or property from unlawful acts caused by the government.

Mr. Justice Brennan, writing for the majority in Board of Education of Island Trees v. Pico, made it very clear that free speech is a two-way street — the right to receive information as well as the right to disseminate information.

> Our precedents have focused "not only on the role of the First Amendment in fostering individual self-expression but also on its role in affording the public access to discussion, debate, and the dissemination of information and ideas." First National Bank of Boston v. Bellotti, 435 U.S. 765, 783 (1965). And we have recognized that "the State may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge." Griswold v. Connecticut, 318 U.S. 479, 482 (1965). In keeping with the principle, we have held that in a variety of contexts "the constitution protects the rights to receive

information and ideas." Stanley v. Georgia, 394 U.S. 557, 564 (1969); see Kleindienst v. Mandel, 408 U.S. 753, 762-763 (1972) (citing cases). This right is an inherent corollary of the rights of free speech and press that are explicitly guaranteed by the Constitution, in two senses. First, the right to receive ideas follows ineluctably from the Senders First amendment right to send them: "The right of freedom of speech and freedom of press...embraces the right to receive it." Martin v. Struthers, 319 U.S. 141, 143 (1943) (citation omitted). "The dissemination of ideas can accomplish nothing if otherwise willing addressees are not free to receive and consider them. It would be a barren marketplace of ideas that had only sellers and no buyers." Lamont v. Postmaster General, 381 U.S. 301, 308 (1965) (Brennan, J., concurring). More

importantly, the right to receive ideas is a necessary predicate to the recipient's meaningful exercise of his own rights of speech, press, and political freedom. Board of Education of Island Trees v. Pico, 457 U.S. 853,866-867 (1982).

The right to receive information to be able to speak intelligently, and freely for the public good pales in comparison to the right to receive information to protect one's life, liberty, and property from the unlawful intrusion of the federal government.

In 1974, Congress enacted the Privacy Act (5 U.S.C. 552) as a protection of the Citizens by setting forth clear and precise mandates that government agencies must maintain "complete, accurate and timely records" with regard to any individual who knowingly subjected themselves to the authority of a federal agency. The Secretary of the Treasury of the United States has complied with the Privacy Act requirements

at 5 U.S.C. 552 a(f) and promulgated regulations setting the policies and procedures that require the IRS to maintain records and to provide access to the confidential tax records of the individuals who requested their records.

Regulations, that are "inextricable intertwined with the statute" have the force and effect of law and are binding on the agency, "Once promulgated, these regulations, called for by the statute itself, have the force of law...just as if the details had been incorporated into the congressional language." United States v. Mersky, 361 U.S. 431, 438 (1960). It is not optional for the IRS or Agent McKinney to decide whether they do or do not want to provide access to the records. The Privacy Act regulations binding on the IRS require that they provide access to the records. Failure to provide access is a violation of federal law. The ruling and affirmation of the Seventh Circuit Courts has placed the IRS above the law and has effectively sanctioned the IRS's policy and practice to deprive Petitioner

and the American citizenry of their First Amendment right to receive information to protect themselves from government tyranny and abuses.

The first and most fundamental record maintained by a federal agency would be the record that shows how the subject individual was determined to be under the authority of the agency. For the IRS, this necessarily would be a record that establishes that the individual was a taxpayer as that term is defined in the Internal Revenue Code. It is important to note that one must fall within the specific and limited definition contained in the Internal Revenue code and not what someone may assume to be the definition of a taxpayer.

Petitioner has the right and the responsibility to himself and posterity to determine if he is subject to the authority of the Department of the Treasury and to determine if he has any obligation to the United States government. Richard T. Harris cannot possibly know whether he has an obligation to the

United States government unless there is provided to him some lawful document or record that sets forth the basis for such a determination. The United States courts have ruled:

> The revenue laws are a code or system in regulation of tax assessment and collection. They relate to taxpayers, and not to non-taxpayers. The latter are without their scope. No procedure is prescribed for non-taxpayers, and no attempt is made to annul any of their rights and remedies in due course of law. With them Congress does not assume to deal, and they are neither of the subject nor of the object of the revenue laws. Economy Plumbing and Heating v. United States, 470 F.2d 585, at 589 (Ct. Cl. 1972).
>
> It is equally well setted (sic) that the Revenue laws relate only to taxpayers. No procedure is prescribed for a non-taxpayer where the

government seeks to levy on property belonging to him for the collection of another's tax, and no attempt has been made to annul the ordinary rights or remedies of a non-taxpayer in such cases. Botta v. Scanlon, 288 F.2d 504, 508 (1961) citing the United States Court of appeals for the Tenth Circuit in reversing the trial court in Adler v. Nicholas, 166 F.2d 674, 678 (10 Cir. 1948).

It becomes abundantly clear that the term "taxpayer" for purposes of the Internal Revenue Code relate only to persons who are subject to or liable for a revenue tax. Why is Agent McKinney adamant in his refusal to provide documentation of his authority as it applies to this particular situation? Why has the IRS steadfastly refused to comply with Federal Law and those regulations promulgated by its own agency?

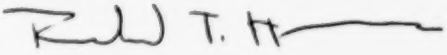
At no time has Petitioner refused to comply with the 7602 summons. However, it is abundantly clear that Harris is

entitled by law to receive specific information before producing any document or answering any question. "Whatever the form in which the government functions, anyone entering into an arrangement with the Government takes the risk of having accurately ascertained that he who purports to act for the Government stays within the bounds of his authority...And this is so even though as here, the agent himself may have been unaware of the limitations upon his authority." Federal Crop Ins. Corp. v Merrill, 332 U.S. 380 at 384 (1947); 68 S.Ct. 1; 92 L.Ed. 10.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Richard T. Harris
607 South State Street
West Harrison, Indiana 47060
(812) 637-2585

March 10, 1999

APPENDIX

UNPUBLISHED ORDER
Not to be cited per Circuit Rule 53

APPENDIX A

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Submitted December 10, 1998*

Decided

Before

Hon. RICHARD A. POSNER, *Chief Judge*

Hon. JOEL M. FLAUM, *Circuit Judge*

Hon. FRANK H. EASTERBROOK, *Circuit Judge*

UNITED STATES OF AMERICA,

Petitioner-Appellee,

Appeal from the United States District Court for the Southern

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* After an examination of the briefs and the record, we have concluded that oral argument is unnecessary, and the appeal is submitted on the briefs and the record. *See* Fed. R. App. P.

34(a); Cir. R. 34(f).

District of Indiana,

No. 98-3117 New Albany Division

v. No. NA 98-004-MISC

RICHARD T. HARRIS Sarah Evans Barker,

Respondent-Appellant. *Chief Judge.*

ORDER

The United States petitioned the district court for enforcement of an Internal Revenue Service (IRS) summons served on Richard T. Harris, and the court granted the petition. Harris appeals and we affirm.

I.

On February 27, 1997 IRS agent Sam McKinney issued a summons to Harris as part of an ongoing investigation into the tax liability of Hilary M. Beck, also known as Larry M. Beck. The summons ordered Harris to appear before

McKinney and produce for examination designated books, records and other documents of Beck's. Citing the Privacy Act of 1974, 5 U.S.C. § 552a, and the Freedom of Information act, 5 U.S.C. § 552, Harris sent McKinney a series of questions about the investigation and the information sought in the summons. On the appointed day, Harris appeared, but refused to produce any of the requested documents until he received answers to his questions. The IRS has never responded to Harris' questions.

For more than a year, Harris continued to refuse to comply with the summons, and on March 16, 1998, the government petitioned the district court to enforce the summons. Harris filed a response attempting to resist the summons. The district court granted the government's petition and ordered Harris to comply because he could not refute the

government's prima facie case that the summons had been issued for a proper purpose. Harris timely filed a notice of appeal.

II.

On appeal, Harris argues that he is entitled to the information he requested from the IRS prior to complying with the summons. We review the district court's determination of whether to enforce a summons for clear error. Miller v. United States, 150 F.3d 770, 771 (7th Cir. 1998).

To obtain enforcement of a tax summons, the government must establish a prima facie case that the IRS issued the summons for a proper purpose. 2121 Arligton Heights Corp. V. Internal Revenue Service, 109 F.3d 1221, 1224 (7th Cir. 1997). Establishing a prima facie case imposes only a minimal burden on the government. Id. The government must show only that the summons issued as part of a legitimate

investigation; the information sought may be relevant; the IRS does not already possess the information; and the IRS satisfied the statutory requirements for issuing a summons. United States v. Powell, 379 U.S. 48, 57-58 (1964). Usually the government establishes its prima facie case through an affidavit, and even minimal affidavits satisfy the standard. Miller, 150 F.3d at 772.

In this case, the government established its prima facie case by attaching an affidavit signed by agent McKinney to its Petition To Enforce The Summons. According to the affidavit, the summons issued to Harris was part of an ongoing investigation into the tax liability of Beck for the tax years 1990 through 1993. The affidavit also stated that the IRS did not already have the requested documents relevant to the Beck investigation, and that McKinney has followed the Internal Revenue Code's requisite steps for issuing a summons.

Harris makes an irrelevant argument that the Constitution and a variety of statutes, including the Privacy Act, 5 USC. § 552a, guarantee him answers to his questions before he has to comply with the IRS summons. Harris is wrong. See United States v. McAnlis, 721 F.2d 334, 337 (11th Cir. 1983) (holding IRS compliance with Privacy Act not a prerequisite to enforcement of IRS summons); United States v. Berney, 713 F.2d 568, 572 (10th Cir. 1983) (holding that IRS failure to comply with Privacy Act not a defense to IRS summons enforcement proceedings). The only way Harris can avoid enforcement of the summons is by either presenting facts disproving one of the elements of the government's prima facie case or showing that the IRS issued the summons in bad faith. Miller, 150 F.3d at 772. Harris does neither. He, therefore, fails to meet his "extraordinarily heavy burden" in this case. Id. at 772.

Accordingly, we AFFIRM

APPENDIX B

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF INDIANA

NEW ALBANY DIVISION

UNITED STATES OF AMERICA,	)	
Petitioner,	)	
vs.	)	NA 98-004-MISC.
RICHARD T. HARRIS,	)	
Respondent.	)	

ENTRY ON PENDING MATTERS AND

DIRECTING ENTRY OF JUDGMENT

The United States of America seeks an order compelling compliance with an administrative summons. The respondent, the person on whom the summons was served, seeks to be excused from compliance.

APPENDIX B

Whereupon the court, having read and examined each of the pertinent materials in this case, and being duly advised, now makes its ruling.

I. Background

On February 27, 1997, Internal Revenue Officer Sam McKinney ("McKinney") issued an administrative summons directing respondent Richard T. Harris ("Harris") to appear before McKinney at the office of the District Director of the Internal Revenue Service located at 16 Spiral Drive, Suite 120, Florence, Kentucky. This summons directed that Harris produce for examination designated books, records and other papers, and was issued in connection with McKinney's assignment to investigate the collection of the income tax liability of Hilary M. Beck, aka Larry M. Beck, for the taxable years ending December 31, 1990, December 31, 1991,

December 31, 1992, and December 31, 1993. The summons just described was personally served on Harris on the date of its issuance.

Harris appeared as directed in the subpoena served on him, but refused to produce the designated records until certain questions he presented to McKinney were answered.

II. Discussion

When the government seeks enforcement of a summons, it must establish a prima facie case that the summons was issued for a proper purpose by showing (1) that the investigation will be conducted pursuant to a legitimate purpose, (2) that the inquiry may be relevant to the purpose, (3) that the information sought is not already within its possession, and (4) that the administrative steps required by the Code have been followed. *2121 Arlington Heights Corp. V. IRS*, 109 F.3d 1221, 1224 (7th Cir. 1997). The government ordinarily proves

these elements by affidavit of the revenue agent conducting the audit. *Id.; United States v. Will*, 671 F.2d 963, 966 (6th Cir. 1982). This burden is "slight." *United States v. Kis*, 658 F.2d 526, 536 (7th Cir. 1981). Once met, the burden shifts to the taxpayer to disprove one of the four aforementioned elements. This burden is "a heavy one," for he "must do more than just call into question the Government's prima facie case." *Id.* At 538-39 (quoting *United States v. LaSalle Nat'l Bank*, 437 U.S. 298, 315 (1978). The taxpayer must prove that the summons has "no civil purpose whatsoever," and that the IRS "has abandoned any institutional pursuit of a civil tax determination." *United States v. Michaud*, 907 F.2d 750, 754 (7th Cir. 1990) (citation omitted).

The United States of America, by virtue of McKinney's affidavit, has established a *prima facie* case that the summons to Harris was issued for a proper purpose. The other elements

of the United States' *prima facie* case have likewise been met through the same means. Harris resists the effect of this, but not by attempting to disprove any of these elements; instead, he has interjected his insistence that certain questions he has about the process and about this investigation in particular be answered before he complies with the summons. Harris' concerns and interest in this additional information may be sincere, reasonable and pertinent to other matters, but do not constitute a valid basis on which to delay or avoid compliance with the administrative summons served on him.

III. Conclusion

Based on the foregoing, the United States is entitled to prompt enforcement of the summons issued to Harris on February 27, 1997, and Harris is not entitled to any additional information regarding the subpoena or the process before complying. The United States' petition to Enforce Internal

Revenue Summons is therefore **granted** and Harris' petition for a writ of mandamus must be denied. A separate Order consistent with this Entry shall now issue, and through such Order Harris will be directed to promptly comply with the administrative summons issued to him. The United States shall recover its costs in this action.

IT IS SO ORDERED.

_____

Judge, United States District Court

Date:

APPENDIX B

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF INDIANA

NEW ALBANY DIVISION

UNITED STATES OF AMERICA,	)	
Petitioner,	)	
vs.	)	NA 98-004-MISC.
RICHARD T. HARRIS,	)	
Respondent.	)	

O R D E R

The court, having this day made its Entry concerning the parties' claims in this matter, and in such Entry having determined that the respondent, Richard T. Harris, shall promptly comply with the administrative summons served on him on February 27, 1997,

IT IS THEREFORE ORDERED AND ADJUDGED that Richard T. Harris fully comply with the

administrative summons served on him by Internal Revenue Officer Sam McKinney on February 27, 1997, that this compliance be at the time and place specified by the Internal Revenue Service and that this compliance occur not later than September 4, 1998.

_____

Judge, United States District Court

Date:

Copies to:

Jeffrey Hunter

Office of the United States Attorney

5th Floor, United States Courthouse

46 E. Ohio Street

Indianapolis, IN 46204

Richard T. Harris

607 South State Street

West Harrison, IN 47060

APPENDIX C

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

APPENDIX D

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probably cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

APPENDIX E

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for pubic use, without just compensation.

-CITE-

5 USC Sec. 552a 01/16/96

-EXPCITE-

TITLE 5 - GOVERNMENT ORGANIZATION AND EMPLOYEES

PART I - THE AGENCIES GENERALLY

CHAPTER 5 - ADMINISTRATIVE PROCEDURE

SUBCHAPTER II - ADMINISTRATIVE PROCEDURE

-HEAD-

Sec. 552a. Records maintained on individuals

-STATUTE-

(a) Definitions. - For purposes of this section -

(1) the term "agency" means agency as defined in section 552(e) (FOOTNOTE 1) of this title; (FOOTNOTE 1) See References in Text note below.

(2) the term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(3) the term "maintain" includes maintain, collect, use, or disseminate;

(4) the term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(5) the term "system of records" means a group of any under the control of any agency from which information is retrieved by the name of the individual or by some identifying

number, symbol, or other identifying particular assigned to the individual;

(6) the term "statistical record" means a record in a system of records maintained for statistical or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13;

(7) the term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected;

(8) the term "matching program" -

(A) means any computerized comparison of -

(I) two or more automated systems of records or a system of system of records with non-Federal records for the purpose of -

(1) establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs, or

(II) recouping payments or delinquent debts under such Federal benefit programs, or

(ii) two or more automated Federal personnel or payroll systems of records or a system of Federal personnel or payroll records with non-Federal records,

(B) but does not include -

(I) matches performed to produce aggregate statistical data without any personal identifiers;

(ii) matches performed to support any research or statistical project, the specific data of which may not be used to make decisions concerning the rights, benefits, or privileges of specific individuals;

(iii) matches performed, by an agency (or component thereof) which performs as its principal function any activity pertaining to the enforcement of criminal laws, subsequent to the initiation of a specific criminal or civil law enforcement investigation of a named person or persons for the purpose of gathering evidence against such person or persons;

(iv) matches of tax information (1) pursuant to section 6103(d) of the Internal Revenue Code of 1986, (II) for purposes of tax administration as defined in section 6103(b)(4)

of such Code, (III) for the purpose of intercepting a tax refund due an individual under authority granted by section 464 or 1137 of the Social Security Act; or (IV) for the purpose of intercepting a tax refund due an individual under any other tax refund intercept program authorized by statute which has been determined by the Director of the Office of Management and Budget to contain verification, notice, and hearing requirements that are substantially similar to the procedures in section 1137 of the Social Security Act;

(v) matches -

(1) using records predominantly relating to Federal personnel, that are performed for routine administrative purposes (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v); or

(II) conducted by an agency using only records from systems of records maintained by that agency; if the purpose of the match is not to take any adverse financial, personnel, disciplinary, or other adverse action against Federal personnel;

(vi) matches performed for foreign counter-intelligence purposes or to produce background checks for security clearances of Federal personnel or Federal contractor personnel; or

(vii) matches performed pursuant to section 6103(I)(L2) of the Internal Revenue Code of 1986 and section 1144 of the Social Security Act;

(9) the term "recipient age" means any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a matching program;

(10) the term "non-Federal agency" means any State or local government, or agency thereof, which receives records contained in a system of records from a source agency for use in a matching program;

(11) the term "source agency" means any agency which discloses records contained in a system of records to be used in a matching program, or any State or local government, or agency thereof, which discloses records to be used in a matching program;

(12) the term "Federal benefit program" means any program administered or funded by the Federal Government, or by any agent or State on behalf of the Federal Government, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals; and

(13) the term "Federal personnel" means officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

(b) Conditions of Disclosure. - No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be -

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) required under section 552 of this title;

(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;

(4) to the Bureau Of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record and the record is to be transferred in a form that is not individually identifiable;

(6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(11) pursuant to the order of a court of competent jurisdiction; or

(12) to a consumer reporting agency in accordance with section 3711(f) of title 31.

(c) Accounting of Certain Disclosures. - Each agency, with respect to each system of records under its control, shall -

(1) except for disclosures made under subsections (b)(1) or (b)(2) of this section, keep an accurate accounting of -

(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection

(b) of this section; and

(B) the name and address of the person or agency to whom the disclosure is made;

(2) retain the accounting made under paragraph (1) of subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(3) except for disclosures made under subsection (b)(7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

(4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

(d) Access to Records. - Each agency that maintains a system of records shall -

(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the

record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;

(2) permit the individual to request amendment of a record pertaining to him and -

(A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

(B) promptly, either -

(I) make any correction of any portion thereof which the individual believes is not timely, or complete; or

(ii) inform the individual of its refusal to amend the record in accordance with his request, the reason for the

refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that agency, and the name and business address of that official;

(3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for

his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection (g)(1)(A) of this section;

(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

(5) nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(e) Agency Requirements. - Each agency that maintains a system of records shall -

(1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;

(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual -

(A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(B) the principal purpose or purposes for which the information is intended to be used;

(C) the routine uses which may be made of the information, as published pursuant to paragraph (4)(D) of this subsection; and

(D) the effects on him, if any, of not providing all or any part of the requested information;

(4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register upon establishment or revision a notice of the existence and character of the system of records, which notice shall include -

(A) the name and location of the system;

(B) the categories of individuals on whom records are maintained in the system;

(C) the categories of records maintained in the system;

(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;

(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

(F) the title and business address of the agency official who is responsible for the system of records,

(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;

(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and

(I) the categories of sources of records in the system;

(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is

reasonably necessary to assure fairness to the individual in the determination;

(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available

to any person under compulsory legal process when such process becomes a matter of public record;

(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

(10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or

unfairness to any individual on whom information is maintained;

(11) at least 30 days prior to publication of information under paragraph (4)(D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency; and

(12) if such agency is a recipient agency or a source agency in a matching program with a non-Federal agency, with respect to any establishment or revision of a matching program at least 30 days prior to conducting such program, publish in the Federal Register notice of such establishment or revision.

(f) Agency Rules. - In order to carry out the provisions of this section, each agency that maintains a system of records

shall promulgate rules in accordance with the requirements (including general notice) of section 553 of this title, which shall -

(1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;

(2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;

(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;

(4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and

(5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record. The Office of the Federal Register shall biennially compile and publish the rules promulgated under this subsection and agency notices published under subsection (e)(4) of this section in a form available to the public at low cost.

(g)(1) Civil Remedies. - Whenever any agency (A) makes a determination under subsection (d)(3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

(B) refuses to comply with an individual request under subsection (d)(1) of this section;

(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to

have an adverse effect on an individual, the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

(2)(A) In any suit brought under the provisions of subsection (g)(1)A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(3)(A) In any suit brought under the provisions of subsection (g)(1)(B) of this section, the court may enjoin the

agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(4) In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or

willful, the United States shall be liable to the individual in an amount equal to the sum of -

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of $ 1,000; and

(B) the costs of the action together with reasonable attorney fees as determined by the court.

(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information

required under this section to be disclosed to an individual and the information so misrepresented is material to established of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by mason of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

(h) Rights of Legal Guardians. - For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

(I)(1) Criminal Penalties. - Any officer or employee of an agency, who by virtue of his employment or

official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it shall be guilty of a misdemeanor and fined not more than $5,000.

(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than $5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency

under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

(j) General Exemptions. - The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (I) if the system of records is -

(1) maintained by the Central Intelligence Agency; or

(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation,

pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision. At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(k) Specific Exemptions. - The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(l), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from subsections (c)(3), (d), (e)(l), (e)(4)(G), (H), and (I) and (f) of this section if the system of records is -

(1) subject to the provisions of section 552(b)(1) of this title;

(2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section: provided, however, that if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the

extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18;

(4) required by statute to be maintained and used solely as statistical records;

(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the

extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in

confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(1) Archival Records. - Each agency record which is accepted by the Archivist of the United States for storage, processing, and servicing in accordance with section 3103 of title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Archivist of the United States shall not disclose the record except to the agency which maintains the record, or under rules established

by that agency which are not inconsistent with the provisions of this section.

(2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e)(4)(A) through (G) of this section shall be published in the Federal Register.

(3) Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the

United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this section except subsections (e)(4)(A) through (G) and (e)(9) of this section.

(m)(1) Government Contractors. - When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (I) of this section any such contractor and any employee of such contractor, if such

contract is agreed to on or after the effective date of section, shall be considered to be an employee of an agency.

(2) A consumer reporting agency to which a record is disclosed under section 3711(f) of title 31 shall not be considered a contractor for the purposes of this section.

(n) Mailing Lists. - An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

(o) Matching Agreements. - (1) No record which is contained in a system of records may be disclosed to a recipient agency or non-Federal agency for use in a computer matching program except pursuant to a written agreement between the

source agency and the recipient agency or non-Federal agency specifying -

(A) the purpose and legal authority for conducting the program;

(B) the justification for the program and the anticipated results, including a specific estimate of any savings;

(C) a description of the records that will be matched, including each data element that will be used, the approximate number of records that will be matched, and the projected starting and completion dates of the matching program;

(D) procedures for providing individualized notice at the time of application, and notice periodically thereafter as directed by the Data Integrity Board of such agency (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v), to -

(I) applicants for and recipients of financial assistance or payments under Federal benefit programs, and

(ii) applicants for and holders of positions as Federal personnel, that any information provided by such applicants, recipients, holders, and individuals may be subject to verification through matching programs;

(E) procedures for verifying information produced in such matching programs as required by subsection (p);

(F) procedures for the retention and timely destruction of identifiable created by a recipient agency or non-Federal agency in such matching program;

(G) procedures for ensuring the administrative, technical, and physical activity of the records matched and the results of such programs;

(H) prohibitions on duplication and redisclosure of records provided by the source agency within or outside the recipient agency or the non-Federal agency, except where required by law or essential to the conduct of the matching program;

(I) procedures governing the use by a recipient agency or non-Federal agency of records provided in a matching program by a source agency, including procedures governing the return of the records to the source agency or destruction of records used in such program;

(J) information on assessments that have been made on the accuracy of the records that will be used in such matching program; and

(K) that the Comptroller General may have access to all records of a recipient agency or a non-Federal agency that

the Comptroller General deems necessary in order to monitor or verify compliance with the agreement.

(2)(A) A copy of each agreement entered into pursuant to paragraph (1) shall -

(I) be transmitted to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives; and

(ii) be available upon request to the public.

(B) No such agreement shall be effective until 30 days after the date on which such a copy is transmitted pursuant to subparagraph (A)(I).

(C) Such an agreement shall remain in effect only for such period, not to exceed 18 months, as the Data Integrity Board of the agency determines is appropriate in light of the

purposes, and length of time necessary for the conduct, of the matching program.

(D) Within 3 months prior to the expiration of such an agreement pursuant to subparagraph (C), the Data Integrity Board of the agency may, without additional review, renew the matching agreement for a current ongoing matching program for not more than one additional year if -

(I) such program will be conducted without any change; and

(ii) each party to the agreement certifies to the Board in writing that the program has been conducted in compliance with the agreement.

(p) Verification and Opportunity to Contest Findings. - (1) In order to protect any individual whose records are used in a matching program, no recipient agency, non-Federal agency,

or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to such individual, or take other adverse action against such individual, as a result of information produced by such matching program, until -

(A)(I) the agency has independently verified the information; or

(ii) the Data Integrity Board of the agency, or in the case of a non-Federal agency the Data Integrity Board of the source agency, determines in accordance with guidance issued by the Director of the Office of Management and Budget that -

(I) the information is limited to identification and amount of benefits paid by the source agency under a Federal benefit program; and

(11) there is a high degree of confidence that the information provided to the recipient agency is accurate;

(B) the individual receives a notice from the agency containing a statement of its findings and informing the individual of the opportunity to contest such findings; and

(C)(I) the expiration of any time period established for the program by statute or regulation for the individual to respond to that notice; or

(ii) in the case of a program for which no such period is established, the end of the 30-day period beginning on the date on which notice under subparagraph (B) is mailed or otherwise provided to the individual.

(2) Independent verification referred to in paragraph (1) requires investigation and confirmation of specific information relating to an individual that is used as a basis for an adverse

action against the individual, including where applicable investigation and confirmation of -

(A) the amount of any asset or income involved;

(B) whether such individual actually has or had access to such asset or income for such individual's own use; and

(C) the period or periods when the individual actually had such asset or income-

(3) Notwithstanding paragraph (1), an agency may take any appropriate action otherwise prohibited by such paragraph if the agency determines that the public health or public safety may be adversely or significantly threatened during any notice period required by such paragraph.

(q) Sanctions. - (1) Notwithstanding any other provision of law, no source agency may disclose any record which is contained in a system of records to a recipient agency

or non-Federal agency for a matching program if such source agency has reason to believe that the requirements of subsection (p), or any matching agreement entered into pursuant to subsection (o), or both, are not being met by such recipient agency.

(2) No source agency may renew a matching agreement unless -

(A) the recipient agency or non-Federal agency has certified that it has complied with the provisions of that agreement; and

(B) the source agency has no reason to believe that the certification is inaccurate.

(r) Report on New Systems and Matching Programs. - Each agency that proposes to establish or make a significant change in a system of records or a matching program shall

provide adequate advance notice of any such proposal (in duplicate) to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget in order to permit an evaluation of the probable or potential effect of such proposal on the privacy or other rights of individuals.

(s) Biennial Report. - The President shall biennially submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report -

(1) describing the actions of the Director of the Office of Management and Budget pursuant to section 6 of the Privacy Act of 1974 during the preceding 2 years;

(2) describing the exercise of individual rights of access and amendment under this section during such years;

(3) identifying changes in or additions to systems of records;

(4) containing such other information concerning administration of this section as may be necessary or useful to the Congress in reviewing the effectiveness of this section in carrying out the purposes of the Privacy Act of 1974.

(t)(l) Effect of Other Laws. - No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section.

(2) No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title.

(u) Data Integrity Boards. - (1) Every agency conducting or participating in a matching program shall establish a Data Integrity Board to oversee and coordinate among the various components of such agency the agency's implementation of this section.

(2) Each Data Integrity Board shall consist of senior officials designated by the head of the agency, and shall include any senior official designated by the head of the agency as responsible for implementation of this section, and the inspector general of the agency, if any. The inspector general shall not serve as chairman of the Data Integrity Board.

(3) Each Data Integrity Board -

(A) shall review, approve, and maintain all written agreements for receipt or disclosure of agency for matching

programs to ensure compliance with subsection (o), and all relevant statutes, regulations, and guidelines;

(B) shall review all matching programs in which the agency has participated during the year, either as a source agency or recipient agency, determine compliance with applicable laws, regulations, guidelines, and agency agreements, and assess the costs and benefits of such programs;

(C) shall review all recurring matching programs in which the agency has participated during the year, either as a source agency or recipient agency, for continued justification for such disclosures;

(D) shall compile an annual report, which shall be submitted to the head of the agency and the Office of Management and Budget and made available to the public on

request, describing the matching activities of the agency, including -

(I) matching programs in which the agency has participated as a source agency or recipient agency;

(ii) matching agreements proposed under subsection (o) that were disapproved by the Board;

(iii) any changes in membership or structure of the Board in the preceding year,

(iv) the reasons for any waiver of the requirement in paragraph (4) of this section for completion and submission of a cost-benefit analysis prior to the approval of a matching program;

(v) any violations of matching agreements that have been alleged or identified and any corrective action taken; and

(vi) any other information required by the Director of the Office of Management and Budget to be included in such report;

(E) shall serve as a clearinghouse for receiving and providing information on the accuracy, completeness, and reliability of records used in matching programs;

(F) shall provide interpretation and guidance to agency components and personnel on the requirements of this section for matching programs;

(G) shall review agency record keeping and disposal policies and practices for matching programs to assure compliance with this section; and

(H) may review and report on any agency matching activities that are not matching programs.

(4)(A) Except as provided in subparagraphs (B) and (C), a Data Integrity Board shall not approve any written agreement for a matching program unless the agency has completed and submitted to such Board a cost-benefit analysis of the proposed program and such analysis demonstrates that the program is likely to be cost effective. (FOOTNOTE 2)

(FOOTNOTE 2) So in original. Probably should be "cost-effective."

(B) The Board may waive the requirements of subparagraph (A) of this paragraph if it determines in writing, in with guidelines prescribed by the Director of the Office of Management and Budget that a cost-benefit analysis is not required.

(C) A cost-benefit analysis shall not be required under subparagraph (A) prior to the initial approval of a written

agreement for a matching program that is specifically by statute. Any subsequent written agreement for such a program shall not be approved by the Data Integrity Board unless the agency has submitted a cost-benefit analysis of the program as conducted under the preceding approval of such agreement.

(5)(A) If a matching agreement is disapproved by a Data Integrity Board, any party to such agreement may appeal the disapproval to the Director of the Office of Management and Budget. Timely notice of the filing of such an appeal shall be provided by the Director of the Office of Management and Budget to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives.

(B) The Director of the Office of Management and Budget may approve a matching agreement notwithstanding the

disapproval of a Data Integrity Board if the Director determines that -

(I) the matching program will be consistent with all applicable legal, regulatory, and policy requirements;

(ii) there is adequate evidence that the matching agreement will be cost-effective; and

(iii) the matching program is in the public interest.

(C) The decision of the Director to approve a matching agreement shall not take effect until 30 days after it is reported to committees described in subparagraph (A).

(D) If the Data Integrity Board and the Director of the Office of Management and Budget disapprove a matching program proposed by the inspector general of an agency, the inspector general may report the disapproval to the head of the agency and to the Congress.

(6) The Director of the Office of Management and Budget shah, annually during the first 3 years after the date of enactment of this subsection and biennially thereafter, consolidate in a report to the Congress the information contained in the reports from the various Data Integrity Boards under paragraph (3)(D). Such report shall include detailed information about costs and benefits of matching programs that are conducted during the period covered by such consolidated report, and shall identify each waiver granted by a Data Integrity Board of the requirement for completion and submission of a cost-benefit analysis and the reasons for granting the waiver.

(7) In the reports required by paragraphs (3)(D) and (6), agency matching activities that am not matching programs may be reported on an aggregate basis, if and to the extent necessary to

protect ongoing law enforcement or counterintelligence investigations.

(v) Office of Management and Budget Responsibilities. - The Director of the Office of Management and Budget shall -

(1) develop and, after notice and opportunity for public comment, prescribe guidelines and regulations for the use of agencies in implementing the provisions of this section; and

(2) provide continuing assistance to and oversight of the implementation of this section by agencies.

(b) Penalties

For penalties applicable to forcible obstruction or hindrance of Treasury officers or employees in the performance of their duties, see section 7212.

In '76, P.L. 94-455, Sec. 1906(b)(13)(A), substituted "Secretary" for "Secretary of his delegate" Code Sec. 7601, effective 2/1/77.

Sec. 7602. Examination of books and witnesses.

(a) Authority to summon, etc.

For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any

person in respect of any internal revenue tax, or collecting any such liability, the Secretary is authorized —

(1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(2) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary may deem proper, to appear before the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

(b) Purpose may include inquiry into offense.

The purposes for which the Secretary may take any action described in paragraph (1), (2), or (3) of subsection (a) include the purpose of inquiring into any offense connected with the administration or enforcement of the enforcement of the internal revenue laws.

(c) No administrative summons when there is Justice department referral.

(1) Limitation of authority. No summons may be issued under this title, and the Secretary may not begin any action under section 7604 to enforce any summons, with respect to any person if a Justice Department referral is in effect with respect to such person.

(2) Justice Department referral in effect. For purposes of this subsection —

(A) In general. A Justice Department referral is in effect with respect to any person if —

(I) the Secretary has recommended to the Attorney General a grand jury investigation of, or the criminal prosecution of, such person for any offense connected with the administration or enforcement of the internal revenue laws, or

(ii) any request is made under section 6103(h,)(3)(B) for the disclosure of any return or return information (within the meaning of section 6103(b)) relating to such person.

(B) Termination. A Justice Department referral shall cease to be in effect with respect to a person when —

(I) the Attorney General notifies the Secretary, in writing, that —

(I) he will not prosecute such person for any offense connected with the administration or enforcement of the internal revenue laws,

(II) he will not authorize a grand jury investigation of such person with respect to such an offense, or

(III) he will discontinue such a grand jury investigation,

(ii) a final disposition has been made of any criminal proceeding pertaining to the enforcement of the internal revenue laws which was instituted by the Attorney General against such person, or

(iii) the Attorney General notifies the Secretary, in writing, that he will not prosecute such person for any offense connected with the administration or enforcement of the internal revenue laws relating to the request described in subparagraph (A)(ii).

(3) Taxable years, etc. treated separately. For purposes of this subsection, each taxable period (or, if there is no taxable period, each taxable event) and each tax imposed

by a separate chapter of this title shall be treated separately.

In '82, P.L. 97-248, Sec. 333(a), amended Code Sec. 7602, effective 9/4/82. Prior to amendment, Code Sec. 7602 read as follows:

"SEC. 7602. EXAMINATION OF BOOKS AND WITNESSES.

"For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such, the Secretary is authorized —

"(1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;

"(2) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary may deem proper, to appear before the Secretary at a time and placed named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

"(3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry."

In '76, P.L. 94-455, Sec. 1906(b)(13)(A), substituted "Secretary" for "Secretary or his delegate" in each place it appeared in Code Sec. 7602, effective 2/1/77.

Sec. 7603. Service of summons.

A summons issued under section 6420(e)(2), 6421(g)(2), 64270(j)(2) or 7602 shall be served by the Secretary, by an attested copy delivered in hand to the person to whom it is directed, or left at his last and usual place of abode; and the certificate of service signed by the person serving the summons shall be evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the